



1997 Assembly Bill 220

Date of enactment: **April 29, 1998**  
 Date of publication\*: **May 13, 1998**

## 1997 WISCONSIN ACT 219

**AN ACT** to amend 939.62 (2m) (a) 2. and 973.0135 (1) (b) 2.; and to create 895.038 and 940.16 of the statutes; relating to: prohibiting performance of certain partial-birth abortions, imposing civil liability for the performance of certain partial-birth abortions and providing a penalty.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

**SECTION 1g.** 895.038 of the statutes is created to read:  
**895.038 Partial-birth abortions; liability.** (1) In this section:

- (a) "Child" has the meaning given in s. 940.16 (1) (a).
- (b) "Partial-birth abortion" has the meaning given in s. 940.16 (1) (b).

(2) (a) Except as provided in par. (b), any of the following persons has a claim for appropriate relief against a person who performs a partial-birth abortion:

- 1. If the person on whom a partial-birth abortion was performed was a minor, the parent of the minor.
- 2. The father of the child aborted by the partial-birth abortion.

(b) A person specified in par. (a) 1. or 2. does not have a claim under par. (a) if any of the following apply:

- 1. The person consented to performance of the partial-birth abortion.
- 2. The pregnancy of the woman on whom the partial-birth abortion was performed was the result of a sexual assault in violation of s. 940.225, 944.06, 948.02, 948.025, 948.06 or 948.09 that was committed by the person.

(3) The relief available under sub. (2) shall include all of the following:

(a) If the abortion was performed in violation of s. 940.16, damages arising out of the performance of the partial-birth abortion, including damages for personal injury and emotional and psychological distress.

(b) Exemplary damages equal to 3 times the cost of the partial-birth abortion.

(4) Subsection (2) applies even if the mother of the child aborted by the partial-birth abortion consented to the performance of the partial-birth abortion.

**SECTION 1r.** 939.62 (2m) (a) 2. of the statutes is amended to read:

939.62 (2m) (a) 2. Any felony under s. 940.01, 940.02, 940.03, 940.05, 940.09 (1), 940.16, 940.19 (5), 940.21, 940.225 (1) or (2), 940.305, 940.31, 941.327 (2) (b) 4., 943.02, 943.10 (2), 943.23 (1g), (1m) or (1r), 943.32 (2), 946.43, 948.02 (1) or (2), 948.025, 948.03 (2) (a) or (c), 948.05, 948.06, 948.07, 948.08, 948.30 (2), 948.35 (1) (b) or (c) or 948.36.

**SECTION 2.** 940.16 of the statutes is created to read:

**940.16 Partial-birth abortion.** (1) In this section:

(a) "Child" means a human being from the time of fertilization until it is completely delivered from a pregnant woman.

(b) "Partial-birth abortion" means an abortion in which a person partially vaginally delivers a living child, causes the death of the partially delivered child with the

\* Section 991.11, WISCONSIN STATUTES 1995-96: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

intent to kill the child, and then completes the delivery of the child.

(2) Except as provided in sub. (3), whoever intentionally performs a partial-birth abortion is guilty of a Class A felony.

(3) Subsection (2) does not apply if the partial-birth abortion is necessary to save the life of a woman whose life is endangered by a physical disorder, physical illness or physical injury, including a life-endangering physical disorder, physical illness or physical injury caused by or arising from the pregnancy itself, and if no other medical

procedure would suffice for that purpose.

**SECTION 3.** 973.0135 (1) (b) 2. of the statutes is amended to read:

973.0135 (1) (b) 2. Any felony under s. 940.01, 940.02, 940.03, 940.05, 940.09 (1), 940.16, 940.19 (5), 940.21, 940.225 (1) or (2), 940.305, 940.31, 941.327 (2) (b) 4., 943.02, 943.10 (2), 943.23 (1g), (1m) or (1r), 943.32 (2), 946.43, 948.02 (1) or (2), 948.025, 948.03 (2) (a) or (c), 948.05, 948.06, 948.07, 948.08, 948.30 (2), 948.35 (1) (b) or (c) or 948.36.

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